



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Secretary of Natural Resources

David K. Paylor  
Director  
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Jeffrey Hurst  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
DICKENSON-RUSSELL CONTURA, LLC  
FOR  
MCCLURE RIVER COAL PREPARATION PLANT**

**Registration No. 10804**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, and - 1316, between the State Air Pollution Control Board and Dickenson-Russell Contura, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Dickenson-Russell Contura, LLC” means Dickenson-Russell Contura, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Dickenson-Russell Contura, LLC is a ‘person’ within the meaning of Va. Code § 10.1-1300.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Dickenson-Russell Contura, LLC – McClure River Preparation Plant, located at 2079 Herndon Road, McClure, Dickenson County, Virginia, which operates a coal processing and handling facility.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a Title V Permit to operate a coal processing and handling facility which was issued under the Air Pollution Control Law and the Regulations to Dickenson-Russell Contura, LLC, effective September 15, 2015.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Facts and Conclusions of Law**

1. Dickenson-Russell Contura, LLC owns and operates the Facility in Dickenson County, Virginia. The Facility is a coal processing and handling facility.
2. On February 7, 2019, DEQ staff reviewed the Title V Semi-Annual Report for reporting period July 1, 2018 to December 31, 2018 and the 2018 Title V Compliance Certification submitted January 23, 2019. During the review it was noted the facility had not completed performance testing of the thermal dryer once every five years as required in the Permit. The date of the most recent performance test was November 19, 2013.
3. Condition No. 23 of the Permit states, "A performance test shall be conducted

once every five years, prior to and within six months of submittal of the Title V permit renewal application, for particulate matter, sulfur dioxide, and nitrogen oxides on the thermal dryer to determine compliance with the emission limits...”

4. 9VAC5-80-110 requires that “...each permit shall contain terms and conditions setting out the following requirements with respect to compliance: 1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit...”
5. On February 15, 2019, based on the February 7, 2019 report review, the Department issued a Notice of Violation No. ASWRO001117 to Dickenson-Russell Contura, LLC for the alleged violation described in paragraph C(2) above. Additionally, an Information Request was issued to Dickenson-Russell Contura, LLC requesting information for the (RICE-4) emergency generator.
6. On February 21, 2019, the Department received a telephone response to the NOV from representatives of the Facility noting the performance test was being scheduled at the first available date for the testing company.
7. On March 7, 2019 and March 8, 2019, Dickenson-Russell Contura, LLC submitted information regarding the (RICE-4) emergency generator. Additionally, on March 13, 2019, a stack protocol was submitted with an anticipated performance test date of April 17, 2019.
8. On March 19 2019, DEQ staff reviewed the information submitted concerning the (RICE-4) emergency generator which indicated the unit became subject to Article 6 permitting as a stationary source when the unit had been on-site for more than 12 months. The start-up date for the emergency generator was September 6, 2015 for mine ventilation at Deep Mine 41 and has remained at the same location since startup.
9. 9VAC5-80-50(A)(3) requires that “Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources: (3) Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.”
10. 9VAC5-80-90(D)(2) requires that “Regardless of the emissions units designated in 9VAC5-80-720 A or C or the emissions levels listed in 9VAC5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement or the calculation of permit fees.”

11. 9VAC5-80-710(A)(4) ) requires that "Regardless of the emissions units designated in 9VAC5-80-720 A, B, or C, the emissions from any emissions unit should be included in the permit application submitted pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this chapter if the omission of those emissions units would interfere with the determination of applicability of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this chapter, the determination of or imposition of any applicable requirement, or the calculation of permit fees."
12. On April 17, 2019, performance testing was conducted at the Facility for particulate matter, sulfur dioxide, and nitrogen oxides on the thermal dryer to determine compliance with the emission limits.
13. Based on the results of the February 7, 2019 report review, the February 21, 2019 telephone correspondence, and the March 8, 2019 information submittal, the Board concludes that Dickenson-Russell Contura, LLC has violated Condition 23 of the Permit, 9VAC5-80-50(A)(3), 9VAC5-80-90(D)(2), 9VAC5-80-110, and 9VAC5-80-710(A)(4) as described in paragraphs C(2) through C(4) and C(8) through C(11).

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and - 1316, the Board orders Dickenson-Russell Contura, LLC and Dickenson-Russell Contura, LLC agrees to:

1. Perform the action described in Appendix A of this Order, and
2. Pay a civil charge of \$13,638 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

Each payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Dickenson-Russell Contura, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Dickenson-Russell Contura, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Dickenson-Russell Contura, LLC for good cause shown by Dickenson-Russell Contura, LLC, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order and NOV No.ASWRO001028 dated October 9, 2018. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Dickenson-Russell Contura, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Dickenson-Russell Contura, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dickenson-Russell Contura, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Dickenson-Russell Contura, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dickenson-Russell Contura, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dickenson-Russell Contura, LLC shall demonstrate

that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dickenson-Russell Contura, LLC shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

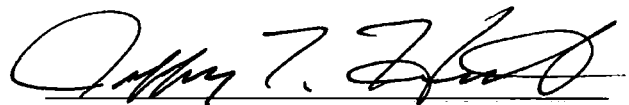
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dickenson-Russell Contura, LLC. Nevertheless, Dickenson-Russell Contura, LLC agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Dickenson-Russell Contura, LLC has completed all of the requirements of the Order.
  - b. Dickenson-Russell Contura, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dickenson-Russell Contura, LLC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Dickenson-Russell Contura, LLC from its obligation to comply

with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Dickenson-Russell Contura, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Dickenson-Russell Contura, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Dickenson-Russell Contura, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dickenson-Russell Contura, LLC
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Dickenson-Russell Contura, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 03<sup>rd</sup> day of May, 2019



Jeffrey L. Hurst - Regional Director  
Department of Environmental Quality

Dickenson-Russell Contura, LLC voluntarily agrees to the issuance of this Order.

Date: 4-30-19 By: Timothy Wallace  
Timothy Wallace, Environmental Compliance Manager  
Dickenson-Russell Contura, LLC

Commonwealth of Virginia

City/County of WISE

The foregoing document was signed and acknowledged before me this 30 day of

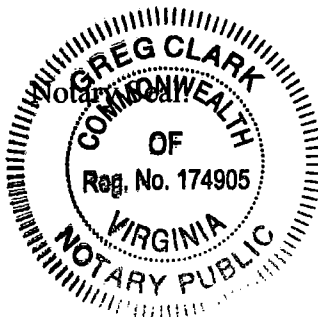
APRIL, 2019 by TIMOTHY WALLACE who is

AUTHORIZED AGENT of Dickenson-Russell Contura, LLC, on behalf of  
the company.

[Signature]  
Notary Public

174905  
Registration No.

My commission expires: 7-31-2023





## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Dickenson-Russell Contura, LLC:**

1. Shall submit performance test results for particulate matter, sulfur dioxide, and nitrogen oxides to determine compliance with the Permit emission limits within 45 days of the effective date of this Order
2. Shall submit an application within 30 days of the execution of this Order for permit modification of the New Source Review Permit to include the (RICE-4) emergency generator.

### **2. Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, submitted to DEQ pursuant to this Consent Order, Dickenson-Russell Contura, LLC, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **3. DEQ Contact**

Unless otherwise specified in this Order, Dickenson-Russell Contura, LLC shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk  
Enforcement and Air Compliance/Monitoring Manager  
VA DEQ – SWRO  
355-A Deadmore Street  
Abingdon, VA 24210  
(276) 676-4829  
crystal.bazyk@deq.virginia.gov